

Factsheet 10w ● April 2021

## Paying for a permanent care home placement in Wales



**Age Cymru Advice**

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# 1 Information about this factsheet

This factsheet provides information on the financial help that may be available from the local authority for older people needing care in a care home in Wales. It also covers if you are arranging and paying for care yourself.

Depending on your circumstances, you may also find it helpful to read Age Cymru's other factsheets on care home funding, social care service provision and NHS continuing healthcare. Our other related titles include:

- 41w – *Social care assessments for older people with care needs in Wales*;
- 29w – *Finding care home accommodation in Wales*;
- 38w – *Treatment of property in the means test for permanent care home provision in Wales*;
- 39w – *Paying for care in a care home in Wales if you have a partner*;
- 60w – *Care homes in Wales: choice of accommodation when the local authority is assisting with funding*;
- 40w – *Deprivation of assets in the means test for care home provision in Wales*;
- 58w – *Paying for temporary care in a care home in Wales*; and
- 20w – *NHS continuing healthcare and NHS-funded nursing care in Wales*.

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**Note:** The information given in this factsheet is applicable in Wales. Different rules may apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information.

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## 1.1 Definitions and terminology

### Local authority social services departments

In this factsheet references to the '**local authority**' or '**council**' will refer to the *adult social services department* of the local authority. The relevant social services department may be referred to as the following, or similar variations:

- social care department;
- adult social services;
- older persons' department;
- older persons' team.

Adult social services teams are responsible, among other duties, for assessing people's need for 'care and support' or 'social care' services and deciding whether those needs meet the eligibility criteria.

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### **Note: Finding contact details for your social services department**

If you have internet access, you can search for your local authority using your postcode on the Welsh Government's website:

<https://gov.wales/find-your-local-authority>

Alternatively, contact details for your authority should be available in your local telephone directory, or our Age Cymru Advice line can provide them – see section 25 for contact details.

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### **'Care homes'**

The term 'care home' covers any establishment providing accommodation with either:

- just personal care; *or*
- personal care together with nursing care.

**Often the terms 'residential care home' and 'nursing care home' might be used to differentiate between the two types of home**, though within each of these brackets there can be variation in the types of care needs that the home may be able to handle – *see the table on the following pages*.

All care homes must be registered as 'service providers' with the regulator, the Care Inspectorate Wales (CIW), who are responsible for the inspection and registration of homes – see section 25 below for their contact details.

Both residential care homes and nursing care homes can provide various specialisms/services (e.g. dementia care).

However, a home must not provide nursing care if it is not registered for that purpose. Some homes may have some beds registered as providing accommodation and personal care only, and other beds registered for nursing care as well.

In a 2017 study by the Welsh Local Government Association (WLGA)<sup>1</sup>, a table featuring the following information sought to provide further details on the roles of different types of care homes:

<b>Residential care homes</b>	
<b><i>Standard residential care home</i></b>	<p>People living there require help and assistance with issues such as:</p> <ul style="list-style-type: none"> <li>● Getting in and/or out of bed;</li> <li>● washing and/or dressing;</li> <li>● toileting (such as use of continence pads, or “normal catheter care”);</li> <li>● “having food cut up / specially prepared / prompting”;</li> <li>● administration of medication, or use of a mask for oxygen or a nebuliser;</li> <li>● “mild confusion [and/or] memory loss”<sup>2</sup>.</li> </ul>
<b><i>Residential care home for “very dependent elderly”</i></b>	<p>In addition to the standard help and assistance in a residential home outlined above, the person may require:</p> <ul style="list-style-type: none"> <li>● “Assistance of two staff for walking / mobilising / toileting”;</li> <li>● “use of hoist for transfers”;</li> </ul>

<sup>1</sup> Draft Findings for Discussion – Wales Market Analysis of Care Homes for Older people, 4 May 2017, Welsh Local Government Association (WLGA) (a link to the document can be found at: [www.wlga.wales/introduction-to-market-analysis-of-care-homes-in-wales](http://www.wlga.wales/introduction-to-market-analysis-of-care-homes-in-wales))

<sup>2</sup> Ibid

	<ul style="list-style-type: none"> <li>● “staff to help feed them;</li> <li>● “continued supervision by staff because of wandering / interference with others / or their personal possessions”<sup>3</sup>.</li> </ul>
<b>“Elderly Mentally Infirm (EMI)” residential home</b>	<p>A person requiring this accommodation will generally have “an organic mental illness e.g. Alzheimer’s or dementia or a functional illness such as depression”. They may be:</p> <ul style="list-style-type: none"> <li>● “Very forgetful of recent events”;</li> <li>● “confused / disoriented [or get] easily lost”;</li> <li>● “neglectful of hygiene / eating”;</li> <li>● “unable to communicate appropriately / hold meaningful conversations”<sup>4</sup>.</li> </ul>

<b>Nursing care homes</b>	
<b>Nursing home</b>	<p>A person requiring nursing care may need:</p> <ul style="list-style-type: none"> <li>● Significant interventions in order to move, as – for example – they may be “unable to stand or weight bear”;</li> <li>● extensive assistance with continence;</li> <li>● “continuous monitoring / adjustment of medication requiring a trained nurse’s judgement”;</li> <li>● “complicated regimes for communication / medication”;</li> </ul>

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<sup>3</sup> Ibid

<sup>4</sup> Ibid



	<ul style="list-style-type: none"> <li>● “skilled intervention to manage needs”; however “their physical needs outweigh the confusion / behavioural problems and [therefore they do] not require psychiatric nursing skills”<sup>5</sup>.</li> </ul>
<p><b><i>EMI nursing home</i></b></p>	<p>A person requiring this care may exhibit:</p> <ul style="list-style-type: none"> <li>● “Restless behaviour / constant wandering”;</li> <li>● “little recognition of family / friends / everyday objects”;</li> <li>● angry behaviour and may become “upset very quickly [and] not [be] easily diverted” from this. They may become aggressive towards staff and/or other residents, requiring a “skilful intervention for prevention”;</li> <li>● “resistive to personal care”;</li> <li>● “hallucinations / delusions / hearing voices they respond to”<sup>6</sup>.</li> </ul>
<p><b><i>Nursing home providing NHS continuing healthcare (NHS CHC)</i></b></p>	<p>Nursing homes providing NHS CHC will need to be able to deal with particularly high level needs, such as:</p> <ul style="list-style-type: none"> <li>● “Challenging behaviour of a severity <i>and/or</i> frequency <i>and/or</i> unpredictability that presents an immediate and serious risk to self and others. The risks are so serious that they require intervention from and access to an immediate specialist response at all times for safe care”;</li> <li>● someone being completely immobile and their clinical condition is such that “on movement or transfer there is a high risk of serious physical harm and where the positioning is critical”;</li> </ul>

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

NHS CHC is a highly complex area and is different in regard to how the costs are met to other care home placements. This issue is touched upon briefly in this Factsheet (section 16.1 below); however, for more detailed information, see Age Cymru's Factsheet 20w *NHS continuing healthcare and NHS-funded nursing care in Wales*.

- inability to take food and drink by mouth – i.e. “all nutritional requirements taken by artificial means requiring ongoing skilled professional intervention or monitoring over a 24 hour period”;
- someone unable to breath independently and who “requires invasive mechanical intervention”;
- “drug regime[s] that require daily monitoring by a registered nurse to ensure effective symptom and pain management associated with a rapidly changing and or deteriorating condition”;
- “unremitting and overwhelming pain despite all efforts to control pain effectively”<sup>7</sup>.

### Ownership of care homes:

- There are private sector care homes which are run for profit by private organisations or individual proprietors.
- Voluntary sector homes are non-profit making and run by registered charities, religious organisations and housing associations, sometimes for particular groups of people.
- Some care homes are still run directly by the local authority.

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<sup>7</sup> Ibid

## 2 Legislation covering the social care system in Wales

### 2.1 The Social Services and Well-being (Wales) Act 2014 and accompanying Code of Practice guidance

The *Social Services and Well-being (Wales) Act 2014* was fully implemented in April 2016 and is the main legislation that covers the social care system in Wales, including:

- the social care assessment process;
- related rules in regard to arranging and paying for residential care homes and nursing care homes<sup>8</sup>;
- the guidance documents that local authorities must use when assessing needs; and
- the guidance documents that local authorities must use when means testing people who may need to pay towards their services.

**Many of the sections in this factsheet (and other Age Cymru factsheets on social care topics) will use this Act, and the Welsh Government Code of Practice guidance for local authorities which accompanies it, as a main source of information. References will be provided in the text where relevant.**

#### Welsh Government Code of Practice guidance

The following are of particular relevance to this factsheet:

- *Code of Practice on the exercise of social services functions in relation to Part 3 (Assessing the needs of individuals) of the Social Services and Well-being (Wales) Act 2014;*
- *Code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014;*

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<sup>8</sup> The Act also affects the rules in regard to arranging and paying for care at home/non-residential services, though that issue is not covered in this particular factsheet

- *Code of Practice on the exercise of social services functions in relation to **Part 4 (direct payments and choice of accommodation)** and **Part 5 (charging and financial assessment)** of the Social Services and Well-being (Wales) Act 2014 (version 5 – April 2020).*
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**Note:** The Part 4 and Part 5 guidance mentioned above can be found on the Welsh Government website, whilst the other CoP guidance are available on the Social Care Wales site – see the following links:

[www.gov.wales/code-practice-charging-social-care-services](http://www.gov.wales/code-practice-charging-social-care-services)

<https://socialcare.wales/hub/codes-of-practice>

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## 2.2 **Suspension of parts of the Coronavirus Act 2020 relating to social care**

Emergency legislation, the *Coronavirus Act 2020*, originally had the potential to affect certain provisions contained within the *Social Services and Well-being (Wales) Act 2014*; however, these parts of the Coronavirus Act were suspended by the Welsh Government from 22 March 2021.

Further information can be found in a written statement on the Welsh Government website at:

<https://gov.wales/written-statement-coronavirus-act-2020-suspension-local-authority-care-and-support-wales>

### 3 Provision of information & advice and advocacy by local authorities

#### Information and advice

Section 17 in Part 2 of the *Social Services and Well-being (Wales) Act 2014* places duties on local authorities to provide “information, advice and assistance...relating to care and support”, including – as a minimum – “publication of information...on how the care and support system operates in the local authority area...the types of care and support available [and] how to access [this]”<sup>9</sup>. This, of course, would include information and advice on care home provision and paying for care.

#### Advocacy

The *Social Services and Well-being (Wales) Act* also contains duties for local authorities in regard to advocacy services. If you have difficulty in expressing your views and needs and feel that this would be excessively difficult within the assessment process, then an advocacy service may be of help to you.

The Act has strengthened people’s rights to advocacy support in relation to the social care assessment process.

**Advocacy services and information and advice services can often overlap. For example, the Welsh Government’s guidance advises that a key role of each local authority’s information, advice and assistance service “will be to provide individuals with information about the range of advocacy services in their area and to assist them to access it where required as part of achieving their well-being outcomes”.**

In many instances, the requirement on the local authority will be to make people aware of the availability of advocacy support, should they wish to utilise this; in others the authority will have a *specific duty* to “arrange an independent professional advocate” for someone<sup>10</sup>:

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<sup>9</sup> Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

<sup>10</sup> Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), December 2019, Welsh Government

## ● General advocacy duty

The Welsh Government has produced a Code of Practice specifically on the subject of advocacy in the context of the *Social Services and Well-being (Wales) Act* which states that, in all cases:

“To have voice and control, an individual must be able to feel that they are a genuinely equal partner in their interactions with professionals. It is, therefore open to any individual to exercise choice and to **invite any advocate** to support them in expressing their views, wishes and feelings”<sup>11</sup> (emphasis added).

In this context, you could ask a family member or friend to act as an informal advocate for you, or you could contact an organisation that operates a formal advocacy service. Alternatively, a local Age Cymru organisation, or other charitable or voluntary group may offer such a service – see section 25 below for details about contacting your local Age Cymru. If they don’t run one themselves, they may be able to provide contact details for a similar service in your area.

## ● The appointment of an ‘independent professional advocate’

Local authorities are advised in the guidance that they “**must** arrange for the provision of an IPA [independent professional advocate] when a person can only overcome the barrier(s) to **participate fully in the assessment, care and support planning, review and safeguarding processes** with assistance from an appropriate individual, **but there is no appropriate individual available**”<sup>12</sup> (emphasis added).

In other words, this would be where an individual is finding it difficult to express their views in the assessment process, but there are no immediate, or suitable, family or friends to help them, nor is the individual able to independently access, for example, an advocacy service provided by a voluntary organisation.

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

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**Note:** There are also some other situations where people might have a statutory entitlement to a form of advocacy support<sup>13</sup>.

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A copy of the Welsh Government's code of practice on advocacy in relation to the *Social Services and Well-being (Wales) Act* can be accessed at:

[www.gov.wales/advocacy-services-code-practice](http://www.gov.wales/advocacy-services-code-practice)

## 4 Obtaining help from your local authority towards care home costs

### 4.1 Assessment of needs and eligibility for services

**Whether your stay in a home is temporary or permanent, your local authority must carry out an assessment of your care and support needs to establish that you require this type of social care provision before it can assist you with the cost of the placement.**

Under the *Social Services and Well-being (Wales) Act 2014* a local authority has a legal duty to carry out an assessment of anyone living in its area who *may* need community care services, once it becomes aware of this need. The assessment must take into account *all* aspects of your needs.

**Someone's right to have their needs assessment is not affected by the level of their financial resources or other circumstances.** However, subsequent services provided as a result of the assessment are likely to be charged for. How much you pay will be determined via a means test, which is covered in detail in the rest of this factsheet.

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<sup>13</sup> The Welsh Government have recognised in their guidance potential confusion where people could qualify for different statutory entitlements to advocacy at the same time – for example, as well as being owed a duty under the *Social Services and Well-being (Wales) Act*, the authority “may identify a duty to provide an Independent Mental Capacity Advocate (IMCA) under the *Mental Capacity Act 2005*”. In these instances the authority “must meet its duties in relation to working with [the] IMCA...as well as those in relation to [an independent professional advocate] under the [*Social Services and Well-being (Wales) Act*”]. An advocate can potentially act in both roles as the duties of each “have been closely aligned so as to facilitate this” – *Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy)*, Welsh Government. There is some extra information on the *Mental Capacity Act 2005* in section 19 below.

Your needs assessment will usually be carried out by a social worker – also often called a care manager – and should result in an agreed **care and support plan**. You should be given a written copy of this document.

After the completion of a needs assessment, based on the results, the local authority will decide whether or not it should provide or arrange social care services for you.

**The authority must use national eligibility criteria to make this decision** – further information on care needs assessments and the eligibility criteria can be found in Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales*.

### **If the assessment shows you have eligible needs**

If your assessment shows that your needs fall within the eligibility criteria then the local authority has a legal duty to meet these needs.

**This could include a recommendation for a permanent care home placement, though this decision is usually made after all other options to assist you to remain in your own home have been explored.**

## **4.2 Paying for care home placements to meet your eligible care needs – overview**

- Most people who have been assessed as needing residential care will be expected to pay something towards the costs of their accommodation and personal care from their income and/or capital.
- This will be via a means test if the local authority is involved with arranging the placement. The means test will take place according to **nationally set guidelines**.
- **Some people are expected to pay all of the costs themselves, if they have savings or capital assets over a certain amount – currently £50,000**. However, someone in this position can still ask the local authority to arrange their care home placement for them.
- **Both your income and capital are taken into account in the means test** (though there may be some exceptions with particular types of income or capital, or in certain situations – see sections 6 and 7 below).



- If you move into a nursing home (as opposed to a residential care home), the NHS is responsible for meeting the cost of care provided by a registered nurse on site. This is made via a *weekly NHS funded nursing contribution* – further information on this can be found in section 16.2 below.

**All of the above are explained in further detail in the sections which follow.**

### Exceptions to means tested care home placements?

There are a limited number of exceptions to the means test requirement in certain situations, or for particular elements of residential care. For instance, one example you may have heard of is NHS continuing healthcare.

This, and other possible exceptions, are outlined later on in this factsheet – see section 16.

### Temporary care home provision

Temporary care home residents are treated differently in regard to certain aspects of the financial means test – see Age Cymru’s Factsheet 58w *Paying for a temporary stay in a care home in Wales* for further information.

## 5 The ‘capital limit’ and financial means testing for assistance with care home fees

The current capital limit in Wales is **£50,000**.

### 5.1 Capital and savings of £50,000 and above

If you have capital assets and/or savings worth **£50,000 or more** you will be expected to meet the full cost of your residential care – i.e. you will be a self-funder and the local authority will not provide any financial assistance towards the total cost of the care home placement (however you can, if you wish, ask the local authority to arrange the actual placement for you).

If and when your resources are reduced to £50,000, you will be able to get financial assistance towards care home fees from the local authority, as outlined in section 5.2 below.

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**Note:** If your capital is held in the value of the property you were living in as your home (prior to entering the care home) and you have less than £50,000 in 'liquid' capital, see section 6.1 below.

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### Issues for self-funders

It may well still be useful for you to read other sections in this factsheet if you believe that you are going to be a self-funder. For example, you may wish to check sections 6 and 7 which deal with what counts as capital and income for the purposes of the financial means test (some things are fully or temporarily disregarded), to make sure that you will definitely be over the capital limit.

Additionally, section 20 has information on arranging and paying for care yourself (including what will happen if your capital is likely to reduce to £50,000), as well as your right to ask the local authority to organise the care home placement for you (even though you'll be paying all the fees yourself).

Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* and Factsheet 29w *Finding care home accommodation in Wales* may also be useful.

## 5.2 Capital and savings below £50,000

If you have capital assets and/or savings which are worth **less** than £50,000 in total, they will be fully disregarded in the local authority means test for care home provision.

**Therefore, you will be able to get help towards your care home fees from your local authority.**

It should be noted that although you do not have to make any contribution towards care home fees from your capital below £50,000, **you will still be expected to contribute from your day to day income** – for example, your State Pension, or occupational/private pension (though not any earnings from employment). After doing so, you will be able to keep a small amount of money for spending on personal items that are not part of your care and support package – this is known as the *'minimum income amount'* (see section 10 below for more information).

Any income that may be derived from capital below £50,000 will also be fully disregarded for the purposes of the care home charging means test.

## 6 The financial means test for receiving help towards care home fees – how your capital and savings are viewed

**Most forms of capital and savings will be included in the means test, including bank or building society accounts, National Savings accounts, Premium Bonds, stocks and shares, and property (buildings or land).**

### 6.1 Capital held in the value of your home

**Often the value of your home will be taken into account, though there are disregards in certain situations**

The value of the home that you own and have been living in (up until the need arose to go into a care home) may be taken into account in the means test.

Whether or not it will be, can depend on who – if anyone – will remain living there once you have moved into a care home. For example, the value of the property will be disregarded in the means test if it will **continue to be occupied by your partner**, though there are also other potential disregards, be they:

- *mandatory* ones that the local authority has to offer; or
- *discretionary* disregards that the authority may be willing to offer.

Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* has more information on this topic.

### Where no disregards apply and the value of your property is taken into account – the option of deferred payment agreements

Where you have capital above £50,000 and are expected to pay the full care home fee, this may be a problem if your capital is held in the value of the property you were living in as your home, prior to needing to go into a care home.

Therefore, if you have less than £50,000 in *readily available capital*, you will be able – following a 12 week property disregard – to ask the local authority to consider entering into a **deferred payment agreement**.

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#### Note: The 12 week property disregard

This is a disregard which the local authority must apply to the value of a care home resident's former home for the first 12 weeks of a permanent stay in a care home "where the value of any of their other capital is below the capital limit"<sup>14</sup>.

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Welsh Government guidance advises that:

"By entering into a deferred payment agreement a person, whose property is taken into account in their financial assessment, can defer or delay paying some or all of their care costs until a later date so as to not be required to sell their property immediately upon entering a care home. Deferring payment of these costs can help a person to delay the need to sell their home [or help those that are trying to sell their home, but have been unable to find a buyer] at a time that can be challenging (or even a crisis point) for them and their family as they make the transition into residential care"<sup>15</sup>.

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<sup>14</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

<sup>15</sup> Ibid

During the period of the deferred payment agreement you will generally still pay an amount towards the overall care home fee from your pension income (as outlined in section 5.2 above). Therefore as part of the deferred payment arrangement, the local authority will contract with the care home and pay the *difference* between what you will pay from your income – your ‘assessed contribution’ (see section 13 below) – and the **full cost** of the care home, until you are able to repay the shortfall.

**The local authority will usually place a charge on your property for the purpose of securing repayment when the property is eventually sold.**

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### Note: Interest charged on deferred payment agreements

Under the *Social Services and Well-being (Wales) Act*, since April 2016, local authorities have been able to charge interest throughout the *whole period* of a deferred payment agreement. The Welsh Government’s guidance advises that:

“Deferred payment agreements are intended to operate on a cost-neutral basis, with local authorities able to recover the costs associated with deferring a person’s care costs by charging interest should they wish to do so”. This is “to cover the cost of the agreement and the financial risks to local authorities associated with lending”<sup>16</sup>. Where local authorities charge interest, it cannot exceed a certain amount<sup>17</sup>.

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<sup>16</sup> Ibid

<sup>17</sup> This is described in the Welsh Government’s regulations as follows: “The national maximum interest rate an authority can charge is 0.15% above the “relevant rate”. The relevant rate will change every six months on 1st January and 1st July to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. The market gilts rate is currently published in the “Economic and fiscal outlook”, which is usually published twice-yearly on the Office of Budget Responsibility’s website: <http://budgetresponsibility.org.uk/>. The market gilts rate is shown near the bottom of the table entitled “Determinants of the fiscal forecast” included in each published outlook”.

## Where no disregards apply regarding your property, plus you also have other financial resources that, on their own, would be above the capital limit

In this scenario the 12 week property disregard and the option of the deferred payment agreement would **not** be available. This is because you would be deemed able to fully self fund your care using these other resources, even though you didn't have immediate access to the funds tied up in your property.

However, should you subsequently qualify for local authority assistance with the care home fees – for example, this might occur if your liquid capital has run down, but you have not yet sold your property in the meantime – then the 12 week property disregard should be applied at this point (along with the option of a deferred payment agreement), as outlined above.

### Further information

Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* has further information on all of the issues highlighted in this section.

## 6.2 Disregarded capital

Some capital is disregarded (ignored) for the purposes of the financial means test. Capital that is disregarded indefinitely includes:

- In particular circumstances, the value of your home (for example, if it will continue to be occupied by your partner – see Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* for full details).
- Personal possessions – such as paintings or antiques (“unless they were purchased with the intention of reducing capital in order to avoid charges for care and support”<sup>18</sup> – also see section 8 below).
- The surrender value of life insurance policies or annuities.

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<sup>18</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

- The value of funds held in trust or administered by a court, which derive from a payment for personal injury (including compensation for vaccine damage and criminal injuries)<sup>19</sup>.
- Compensation paid to Far East Prisoners of War from 1 February 2001.
- Compensation payments made to those who caught hepatitis C as a result of contaminated NHS blood products.
- Compensation payments made to people affected by the drug Thalidomide.

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**Note:** The above is not a comprehensive list and there are some other disregards listed in the Welsh Government's guidance:

*Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment) (version 5 – April 2020)*

Section 2.1 above has a web address where you can obtain a copy.

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### 6.3 Jointly held capital

Local authorities cannot generally assess the **joint resources of couples**, but they can look at your *share* of jointly held savings if you hold capital with your spouse, partner, or another person/multiple people. You and the other joint owners are generally treated as having **equal** interests in that capital at the time of the means test.

For example, if you have a joint bank or building society account with your spouse, you will be assessed as having **half** of the balance of the account.

#### Dividing accounts so that capital is held separately?

In the above circumstances it is worth considering whether to divide any joint accounts so that each person holds their capital separately.

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<sup>19</sup> The treatment of money held in trust depends on what rights you have to demand that the trust money be paid to you. The rules about trusts are complicated, so you may need to seek advice from the trust provider.

This is because where one account holder uses part of their share of the account to meet care fees, dividing the remainder equally will not accurately reflect the parties' true interests in it. This is explained further in Age Cymru's Factsheet 39w *Paying for care in a care home in Wales if you have a partner*.

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**Important:** Be aware of the information in section 8 of this factsheet, 'Deprivation of assets', if you are considering transferring any of your resources – or giving away any money – to your spouse/partner or another person.

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## Property

**There is an exception to the general rules on jointly held capital when it comes to jointly owned property.**

This is calculated on the basis of the resident's actual share or present sale value of their 'beneficial interest' in the property – see Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* for further information on this topic.

## 6.4 'Notional' capital

This is capital that may be included in the means test even though you do not actually have it. The Welsh Government's guidance, explains this as follows:

**“Notional capital may be capital which:**

- a) would be available to the person if they applied for it;**
- b) is paid to a third party in respect of the person;**
- c) the person has deprived themselves of in order to reduce the amount of a charge [or] contribution...that they have to pay for their care and support”<sup>20</sup>** (further information on this particular issue can be found below in section 8).

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<sup>20</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)



## 6.5 Valuation of capital

Capital will either have a **market value** – that is, the amount a willing buyer would pay (e.g. for stocks and shares), or a **surrender value** (e.g. Premium Bonds). Any outstanding debt secured against the asset, such as a mortgage, is deducted from the value.

In some instances, 10% of the value of the asset can be disregarded for the purposes of the financial means test. The local authority must do this “if there will be any actual expenses involved in selling the asset”.

However, “this must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be”<sup>21</sup>.

If your capital is valued at more than £50,000 then no precise valuation is needed because, as outlined above, you are expected to pay the full care home fee yourself.

If you require information about the valuation of capital held in the form of property, including your former home, see Age Cymru’s companion factsheet to this one – Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales*.

## 6.6 Business assets

Prior to April 2016, the local authority charging rules for care home provision were contained in the *Charging for Residential Accommodation Guide (CRAG)*. This advised local authorities that in the means test they should use discretion to disregard for a ‘reasonable period’ of time the capital value of business assets, providing steps are being taken to realise the capital value. They were further advised that if no immediate intention to realise the capital value in the business assets is demonstrated, then their value could be taken into account in the means test straight away.

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<sup>21</sup> Ibid

The current guidance – *Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment)* – doesn't appear to specifically address this issue, though presumably the same principle would still apply: i.e. a local authority should operate a temporary disregard for the business assets, so long as the person is taking appropriate steps to realise the capital value.

If you are affected by this issue you could contact the Welsh Government for further clarification – see section 25 for their contact details.

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**Note:** There is a disregard listed in the current guidance of at least 26 weeks for assets of any business owned (or part-owned) by a new care home resident who has had to stop self-employed work due to illness or disablement. However, this is in the short-term where **the intention is to take up work again in the future when the person is able** – therefore, the disregard will apply in this scenario only and not to permanent residents.

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## 7 The financial means test for receiving help towards care home fees – how your income is viewed

In the local authority means test, income will be either:

- disregarded (ignored);
- partly disregarded; or
- included in full.

**Generally, unless a specific type of income is identified as being fully or partly disregarded within the charging guidance<sup>22</sup>, it will be taken into account in full.**

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<sup>22</sup> As mentioned elsewhere in this factsheet, this is the *Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment)* (version 5 – April 2020)

**Your income will also be taken into account straight away** (so this will include during an initial 12-week disregard period that is applied for property and during any subsequent deferred payment arrangements in regard to the property).

“Income taken account of **must** be net of any tax or National Insurance contributions”<sup>23</sup>.

The local authority will usually make its calculations on the basis that any income that is available from benefits such as Pension Credit (PC) is being claimed, so it is important to ensure that you have applied for any possible benefit – see section 9 for further information.

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### **Note: If you are in a couple**

If you are the person assessed as needing to go into a care home, only *your income* can be taken into account in the financial means test of what you can afford to pay.

**If someone receives “income as one of a couple, the starting presumption is that each person has an equal share of that income”.**

The Welsh Government’s Code of Practice guidance advises that an exception to this can be made “where the couple agree to declare their joint resources and the result of [conducting the assessment this way] is **financially more advantageous to the person being assessed**” (emphasis added). “A local authority **must** only assess the income of couples in these circumstances”<sup>24</sup>.

In other words, the ‘default position’ of there being a 50/50 split in the share of a couple’s income can sometimes be looked at differently by the authority, with 100% of the joint income included in the assessment, **but** this can *only* happen where this approach results in a more beneficial financial outcome for the care home resident.

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<sup>23</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

<sup>24</sup> Ibid

## 7.1 Disregarded income

Some common disregards include:

- The savings disregard (*see the 'Note' below in section 7.2 for further information on this*).
- Disability Living Allowance (DLA) mobility component or Personal Independence Payment (PIP) mobility component – see section 9.2 for further information on these benefits.
- Earnings from employment (including self employment).
- Direct payments.
- Working Tax Credit and Child Tax Credit.
- War Disablement Pension.
- War widows and widowers special payments.
- Christmas bonus (paid to people receiving certain benefits).
- Income from savings – if you have interest paid on your savings, this is added to the balance of your savings and counts as part of your capital, not as income.
- Regular charitable or voluntary payments received by the care home resident (which could be made by a relative) intended to pay for a specific item not covered by the home's fees<sup>25</sup> – for example, a regular outing not covered by the contract with the local authority.
- Any payments from the following: the Macfarlane Trust (supports people with haemophilia who were infected with HIV as a result of contaminated NHS blood products); the Caxton Foundation and Skipton Fund (provide assistance to people infected with the Hepatitis C virus as a result of NHS treatment using contaminated blood products); and the Eileen Trust (supports people who have contracted HIV as a result of NHS treatment).

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<sup>25</sup> Charitable or voluntary payments that are not made on a regular ongoing basis will not necessarily be disregarded: "the individual circumstances of the payment will need to be taken into account before [the authority makes] a decision on whether to disregard such payments. In general a charitable or voluntary payment which is not made regularly is treated as capital" – Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

A full list can be found in *Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment) version 5 – April 2020*.

## 7.2 Income that is partly disregarded

Some kinds of income must be partly disregarded, such as:

- £10 per week of a War Widows or War Widowers pension.
- Where one of a couple who are married or have a civil partnership enters a care home, 50% of that person's occupational (works) pension, personal private pension or payment from a retirement annuity contract can be passed back to the person remaining at home. The 50% passed back is **disregarded (ignored)** in the means test when calculating how much the resident can pay towards their care home fees. This rule exists in the charging guidance to ensure that a spouse or civil partner, who remains at home, is able to meet their living costs. **However, the 50% disregard only applies** where the resident actually *does* pass half of his/her occupational or private pension/retirement annuity income to their spouse or civil partner; **and** the spouse or civil partner lives anywhere other than in the same care home as the resident. See Age Cymru's Factsheet 39w *Paying for care in a care home in Wales if you have a partner* for further information.
- A small amount of income – up to a maximum of £5.75 per week (or £8.60 per week for a couple) – where the person has made additional retirement provision on top of their State Pension (i.e. occupational pension/s or similar savings). *This particular disregard – the 'savings disregard' – is related to the Pension Credit Savings Credit system (see the 'Note' which follows for further details about the savings disregard). There is a brief section on Pension Credit in this factsheet below (section 9.1), but for further information on the Pension Credit system in general, see Age UK's Factsheet 48 which specifically covers this benefit.*

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### Note: The ‘savings disregard’

This disregard was introduced for people aged 65 and over in 2003 and applies to income and savings that count, within the Pension Credit rules, towards the Savings Credit.

A resident who **actually receives** Savings Credit as part of a Pension Credit award will get a savings disregard in the care home means test of an equal amount to the Savings Credit they receive, **or** a maximum amount of £5.75 per week for a single person (£8.60 for a couple) – **whichever is less**.

So, for example, if a single resident receives only £4.45 of actual Savings Credit, it would be **this figure** that is disregarded; whereas, if he or she happens to receive Savings Credit above £5.75, **they would still only have £5.75 of this figure disregarded**.

Individuals whose income is such that it takes them above the level for receiving a Pension Credit Savings Credit award are **still entitled** to have a flat rate of £5.75 of their income disregarded (£8.60 for a couple) in the means test.

**There does not need to be a claim for (or an award of) Pension Credit Savings Credit in the above situation.** The level of income above the threshold does not affect the entitlement to a savings disregard in the financial means assessment for care home charging, though it must be ‘qualifying income’ as defined in the Pension Credit Savings Credit rules.

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## 7.3 ‘Notional’ income

Similar to notional capital, this is income in the means test that you may be treated as having even though you don’t actually receive it. For instance, it could be:

- income paid by someone else (perhaps a relative) to the local authority or to the home as a ‘third party contribution’;
- income that would be available to you if you applied for it, such as unclaimed social security benefits or unclaimed occupational pension; or
- income that you have disposed of – see section 8 below for further information on this particular issue.

## 8 ‘Deprivation of assets’ and the financial means test for care home charging

### What is meant by deprivation of assets?

If you give away assets or otherwise dispose of them in order to put yourself into a more favourable position to get local authority assistance with your care home fees, the local authority may be able to assess you as if you still have the assets.

Welsh Government guidance to local authorities suggests that the *timing* and *motive* behind the transfer should be taken into account – for example, there could be other motives for transferring an asset and in order for it to amount to deliberate deprivation, the intention to avoid accommodation charges must be a significant part of the reason for taking this action.

In relation to this, the timing is likely to be a big factor in establishing a motive because – for example:

**“At the point the capital was [transferred or] disposed of could the person have had a reasonable expectation of the need for care and support, even if at this point they were not yet receiving this”. Also, would “the person have had a reasonable expectation of needing to contribute towards the cost of this either now or at some future point”?**

**Authorities are advised that it would be unreasonable for them “to decide that deprivation had occurred where if at the time the disposal took place [the care home resident was] fit and healthy and could not have foreseen any need for care and support in the foreseeable future”<sup>26</sup>.**

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**Note:** The local social security office can also consider whether assets were disposed of deliberately to qualify for means-tested benefits such as Pension Credit.

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<sup>26</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

## If the local authority determines that deprivation of assets has occurred

If the authority, having taken into account the other possible reasons for the transfer of an asset, determines that deprivation of assets has occurred, then – as touched upon above – it will “treat the asset as notional capital...in the person’s financial assessment **as if the deprivation had not occurred**” (emphasis added)<sup>27</sup>. As such, the resident will be expected to contribute towards their care fees in line with what they would have been assessed as being able to pay, had they still actually been in possession of the asset. If a debt to the authority occurs as a result, it can take action to recover this.

Under the *Social Services and Well-being (Wales) Act*, where someone has transferred an asset to a third party (a ‘transferee’) as an act of deliberate deprivation, the transferee will be liable to pay the local authority the difference between the fees it has received from the care home resident and what the resident would have paid in total had the transfer not taken place<sup>28</sup>.

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**Note:** Deprivation can also occur in regard to **income**. For example, someone “could give away or sell the right to an income from an occupational pension”<sup>29</sup>.

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Further information about intentional deprivation and the impact which this could have on you, or the person(s) to whom you have given assets, is contained in Age Cymru’s Factsheet 40w *Deprivation of assets in the means test for care home provision in Wales*.

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<sup>27</sup> Ibid

<sup>28</sup> Under previous legislation (and as detailed in the Welsh Government’s old guidance to local authorities based upon this), an authority could only pursue the third party for the costs if the transfer took place within the last six months prior to the resident’s admission to the care home (though the six-month limit only applied to this particular power of recovery – the authority could still use other routes). Under the Code of Practice guidance to support the Social Services and Well-being (Wales) Act, there is no mention of any time limit in regard to pursuing the transferee.

<sup>29</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)



## 9 Social security and disability benefits in the context of paying for care in a care home

Whether you are single or one of a couple, the local authority will expect you to claim all the social security benefits to which you are entitled when you move to live permanently in a care home.

If you are already claiming a social security benefit, the local authority may ask to see details. It may also ask you for permission to request information from the Department for Work and Pensions (DWP). Social security benefits include the State Pension, Attendance Allowance, Disability Living Allowance, Personal Independence Payment and Pension Credit.

### 9.1 Pension Credit

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**Note:** The general rules governing eligibility for Pension Credit (PC) are explained in Age UK's Factsheet 48 *Pension Credit*. Below is some brief information on the benefit.

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**Pension Credit (PC) has two parts:**

- Guarantee Credit; and
- Savings Credit.

PC is means tested. Eligibility is based on your income and capital and your age.

**Up to £10,000 of capital is disregarded** (this applies whether someone lives permanently in a care home, in their own home, or temporarily in a care home). If a single person or a couple have capital above £10,000, for the purposes of the PC means test, they are treated as having a 'tariff' income of £1 per week for every £500 (or part of £500) above the £10,000 capital limit.

There are PC figures given below for both couples and single people. The figures for couples refer to those who are permanently living together. **It should be noted that where one partner moves permanently into residential accommodation Pension Credit will be paid as if he or she is a single person.**

However, if one of a couple enters a care home on a temporary basis (perhaps for respite or a trial period) then they will still be treated as a couple for Pension Credit purposes and resources belonging to both members of the couple are taken into account (unless a specific disregard applies). For more details see Age Cymru's Factsheet 39w *Paying for care in a care home in Wales if you have a partner*.

### Guarantee Credit

Guarantee Credit tops up your income to a set level known as the '**appropriate amount**', if your income would otherwise be below this.

The appropriate amount is made up of a 'standard minimum guarantee' – £177.10 per week for a single person and £270.30 for a couple – and, in some circumstances, other '*additional amounts*'<sup>30</sup>.

The amount of Guarantee Credit paid will usually be the difference between the claimant's existing income and the appropriate amount.

### Savings Credit

Savings Credit provides extra money if you have a modest income (that is higher than the basic state pension) and some savings. However, it is only available if you reached state pension age on or before 6 April 2016.

Again, see Age UK's Factsheet 48 *Pension Credit* for further information.

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<sup>30</sup> For example, there is a 'severe disability' additional amount for a claimant who receives any of the following benefits and lives alone (or is classed as living alone for the purposes of the PC means test): Attendance Allowance (AA); the middle or higher rate care component of Disability Living Allowance (DLA); or the daily living component (either rate) of the Personal Independence Payment (PIP).

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### Note: Pension Credit and property

While you are trying to sell a property that is not disregarded for another reason, Pension Credit can be paid for 26 weeks (or longer 'if reasonable').

**The office handling your claim will need to be satisfied that you are taking 'reasonable steps' to sell the property for this to apply, however.** This Pension Credit does not have to be repaid when your property is sold.

Unlike for financial assessments by the local authority, there is **no** 12-week property disregard for Pension Credit. Entitlement to the benefit will cease during the 12-week property disregard period, unless the property is put on the market. If the property is put on the market at the end of that period a further claim for Pension Credit can be made until the property is sold. The local authority will have to adjust its charges accordingly. See Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* for further information on this subject.

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## 9.2 Disability-related benefits

The main disability-related benefits are:

- **Attendance Allowance (AA);**
- **Disability Living Allowance (DLA);** and
- **Personal Independence Payment (PIP).**

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**Note:** DLA and PIP both have mobility components, as well as care components/daily living components. There is no mobility element to AA, so the benefit only covers care needs. Further information on these benefits in general can be found in Age UK's Factsheet 34 *Attendance Allowance* and Factsheet 87 *Personal Independence Payment and Disability Living Allowance*.

The DLA *mobility component* and PIP *mobility component* are **fully disregarded** within the residential care means test because they are not related to the provision of personal care and support. As a result they should continue to be paid to a permanent local authority funded resident, as well as to someone who is self-funding.

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AA can only be claimed by people over State Pension age (as of April 2021, this is 66 for both men and women<sup>31</sup>).

DLA or PIP are for people under State Pension (SP) age; however, once someone has been awarded them, they can continue to get the benefit, even after they reach SP age, so long as they continue to satisfy the conditions.

No new claims can be made for DLA, as it is being replaced by PIP.

## Self-funders

**People who pay the full cost of their fees (self-funders)**, including those who might be living in local authority owned care homes, are still able to claim or continue receiving AA, DLA (care component) or PIP (daily living component). This will also be the case where the local authority has arranged your care for you and made a contract with the care home, but you are paying the full cost of your personal care and accommodation.

If you are self funding, *except* for the weekly NHS-funded nursing care contribution (see section 16.2) this should also **not** affect your entitlement to the above benefits.

## Where local authority financial help is received

If you receive AA, DLA (care component) or PIP (daily living component) and move permanently into a care home arranged by the local authority, it will be included as part of your income.

**Payment of each of the benefits will normally stop after four weeks (sooner if it is linked with a stay in hospital or an earlier period of state-funded care), if you are receiving financial help from the local authority<sup>32</sup>.**

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<sup>31</sup> In the future it is due to increase further, though this won't start until May 2026.

<sup>32</sup> The *Social Security (Attendance Allowance and Disability Living Allowance) (amendment) Regulations 2007* clarify when you are considered to be resident in a care home and, therefore, after four weeks not entitled to payment of AA/DLA (care component). For PIP, the *Welfare Reform Act 2012* clarifies when you are considered to be resident in a care home and The *Social Security (Personal Independence Payment) Regulations 2013* state that you cannot be paid PIP (daily living component) after four weeks. You will be considered to be resident in a care home when any of the costs of any qualifying services (accommodation, board and personal care) provided for you are paid out of public funds under specified legislation. The Regulations clarify the days that count as being resident in a care home for the purpose of AA/DLA (care component) or PIP (daily living component) entitlement: if you go into a care home from the community, the days you enter and leave are counted as days in the community and the day of transfer between a care home and a hospital or similar institution (or vice versa) is treated as a day in a care home.

## During the 12-week property disregard

AA, DLA (care component) or PIP (daily living component) **will also stop after four weeks of funding under the 12-week property disregard.**

If at the end of the 12 weeks you *continue* to receive local authority funding, but on an **interim (i.e. loan) basis** under a deferred payment agreement, you should ask for AA, DLA (care component) or PIP (daily living component) to be reinstated.

These benefits can all be paid while you are receiving interim or temporary funding from the local authority (e.g. while you are selling your property) **provided that any assistance received from the local authority will later be repaid in full.** This income will help reduce the amount that ultimately has to be repaid to the local authority. See Age Cymru's Factsheet 38w *Treatment of property in the means test for permanent care home provision in Wales* for further information on deferred payments.

## If NHS continuing healthcare is being received

If you are awarded NHS continuing healthcare (CHC), meaning that the NHS will start to pay all your care home fees, you cannot receive AA, DLA (care component) or PIP (daily living component). Usually these benefits will stop after 28 days of receiving the CHC funding (see section 16.1 below for further information on NHS CHC).

## Changes of circumstances whilst you are in a care home

If your AA, DLA (care component) or PIP (daily living component) has been stopped because you are getting local authority funding and you subsequently return home – or move elsewhere, for example sheltered housing – you can ask for it to begin again.

It can also begin again if the local authority no longer needs to give financial help for the cost of the fees, for example if you inherit capital. It is important to inform the appropriate authority of any changes so that you receive all the benefits you are entitled to.

AA, DLA (care component) or PIP (daily living component) might be payable if you are temporarily away from a care home. You should always inform the social security office responsible if you want any of these benefits paid again.

## 10 A 'Minimum Income Amount' for people in care homes who are receiving local authority assistance towards the fees

As indicated earlier in this factsheet, people in a care home with financial resources below the capital limit will contribute most of their income towards the cost of their care and support. However, “a local authority **must** leave the person with a specified amount of their own income so that [they have] money to spend on personal items such as clothes and other items that are not part of their care and support”<sup>33</sup>.

This is known as the Minimum Income Amount (MIA).

Since 12 April 2021 the MIA has been **£33.00 per week** (it is possible it may change again in April 2022).

**Residents may spend their MIA as they wish. You should not be asked to put any of your MIA towards the basic cost of your care.**

### Discretionary power to vary the MIA

In some cases local authorities can apply a higher MIA. Examples given in the Welsh Government's guidance include:

- when a person wishes to pay “half their occupational or personal pension...to a spouse” living at home; or
- where a person's property has been disregarded and, as a result, the local authority needs to consider “whether the MIA is sufficient to enable the person to meet any resultant costs [such as] fixed payments (like mortgages, rent and council tax), building insurance, utility costs (including basic heating during the winter) and reasonable property maintenance costs”<sup>34</sup>.

Age Cymru's Factsheet 39w *Paying for care in a care home in Wales if you have a partner* has some further information.

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<sup>33</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

<sup>34</sup> Ibid

## 11 Choice of care home and third party contributions

Further information on the topics covered in this particular section can also be found in Age Cymru's Factsheet 60w *Care homes in Wales: choice of accommodation when the local authority is assisting with funding*.

### 11.1 Choice of accommodation

The local authority care needs assessment process will have determined what type of accommodation will best suit your needs. When the authority makes arrangements for you to enter a care home, you have a right to choose the particular provider or location, subject to certain conditions (see below).

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**Note:** The information in this section on choice of accommodation refers to people who are to receive local authority assistance towards their care home fees. For those who are fully self funding their care, their choice of which care home to enter will not be restricted by the same conditions, though the home will still need to be able to provide suitable care for the type and level of needs they have. Also, as a self funder when choosing a care home, you may need to consider issues such as what will happen should you require local authority assistance at some point in the future – this issue is covered in section 20 below.

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The local authority should give you information about suitable care homes in your area (for example, it may have a 'preferred list' of providers), though your choice should not be limited to those settings or individual providers with which the local authority already contracts or operates.

The authority must make an arrangement for you to enter the home you choose (your 'preferred accommodation'), provided that **all** of the following are met:

- It appears to the local authority that the home you have chosen will be suitable for your assessed needs (for example, some care homes are not necessarily able to care for people with particular types or levels of need).
- It is available (i.e. the home has a vacancy).
- The cost to the local authority is not **more** than it would normally expect to pay for someone with your assessed needs – see below.
- The provider of the accommodation is willing to enter into a contract with the local authority, subject to the authority's usual terms and conditions for such care.

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**Note:** If you wish to move to a different local authority area within Wales, your current local authority should liaise with the new one to arrange the placement.

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## 11.2 Third party contributions (also known as 'top-ups')

If your 'preferred accommodation' would cost more than the local authority would normally pay for someone with your assessed needs, it must still make the arrangements for you in that home **as long as someone else can make up the difference between that figure and the home's fee by making a third party contribution** (in certain circumstances you can make up the difference yourself, but not as a rule – see section 11.4 below).

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**Note:** This does not mean that local authorities can set **arbitrary ceilings** on the amount which they will pay, so that you are *required* to have a 'top-up' in order to meet the cost of care – see section 11.3 below.

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The third party will need to show that they can reasonably expect to be able to contribute for **as long as the arrangement lasts** – i.e. for the length of time the resident is in the home.



It is also important to bear in mind that the third party and the local authority will need to agree what will happen if the home's fees are raised. This is because the local authority will **not necessarily agree to pay for all, or even part of, such an increase** – therefore it is important to consider this issue before committing to such an agreement<sup>35</sup>.

If, for whatever reason, the third party payments cannot be continued, the resident may have to move to another care home, though the local authority should carry out an assessment of the risks involved before taking this course of action.

### 11.3 Situations where the local authority may not be justified in asking for a top-up

**The authority must be able to demonstrate that care and support suitable to meet your assessed eligible needs can be arranged at its usual cost** (also referred to as 'standard amount', 'usual amount', 'usual rate' or 'usual limit'), prior to requesting that a third party contribution will need to be made.

In other words, top-ups should always be *optional* only (where the care home resident makes an active choice that they would prefer to live in a more expensive care home even though there are other options available that can adequately meet their needs at lower cost).

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<sup>35</sup> The Welsh Government's latest guidance suggests that "a local authority may wish to negotiate any future cost increases with the provider at the time of entering into a contract. This can help provide clarity to individuals and providers and help ensure [the] additional cost remains affordable" – Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

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**Note:** The usual cost is the maximum limit the local authority is generally prepared to pay up to for someone's care home placement in order to meet their assessed needs. These limits vary from authority to authority. As stated above, the local authority should not set arbitrary ceilings on the amount that they will pay. Also when considering the cost of care in their area, the authority should identify a range of different maximum rates which can apply to levels of care and/or different types of care home<sup>36</sup>.

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### Where someone has no choice but to enter a more expensive care home

If you have entered a more expensive home out of *necessity*, the local authority should agree to meet the extra cost. For example, a more expensive home might be necessary if:

- You have **particular needs** which cannot be met in the accommodation offered (for example, the need to be near relatives such as your spouse, or religious or dietary needs).
- **Market pressures** mean that there are no homes in the area accepting residents at the local authority's usual rate (meaning that you have no other option but to choose a place in a home costing more).
- The local authority has **failed to offer sufficient options at its usual cost** (the Welsh Government's guidance advises that to ensure someone has a genuine choice over accommodation "a local authority **must** have more than one option available for a person to choose from within its standard amount for residential care"<sup>37</sup>).

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<sup>36</sup> When given a figure for the usual cost, check what it represents and whether it includes the amount you will be assessed to contribute. Often the amount given is for the total cost of the placement including the resident's contribution. If so, the authority's contribution will be the usual amount less the resident's contribution – i.e. if the authority says its usual cost is £650 per week for someone with your needs, they may mean this is the price they consider a care home should charge – the 'usual cost' for this type of accommodation. However, you will be required to make a contribution towards that, based on the means test – e.g. the authority might assess you as being able to contribute £200 per week, in which case their total contribution would be £450 (even though the usual cost that has been stated is £650).

<sup>37</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)

The Welsh Government's guidance is clear that "where no suitable accommodation is available at its standard amount to meet a person's assessed needs in full, the local authority **must arrange a placement in a suitable more expensive setting** and adjust its funding accordingly to ensure that needs are met. In such circumstances, the local authority **must not** ask the person being placed or a third party to pay the additional cost"<sup>38</sup> (emphasis added).

## 11.4 Residents' contributions to more expensive accommodation

In particular scenarios, exceptions can be made to the usual rule that residents cannot make their own top-ups (or a "First party" additional cost', as they are referred to in the Welsh Government's guidance).

**For example, residents whose property is subject to the 12 week disregard, or who have entered into a 'deferred payment agreement', can make up the cost of more expensive accommodation themselves, from disregarded capital or income.** An exception is made to the usual rule for people in those specific circumstances as they are considered to have enough resources themselves to pay for more expensive accommodation once the value of their home is realised.

## 12 Direct payments and care home accommodation

Prior to April 2016, direct payments could **not** be used to arrange long-term residential care. However, since the full implementation of the *Social Services and Well-being (Wales) Act*, they can now be used for this type of care as well. This is confirmed in the Welsh Government's guidance accompanying the Act:

"Direct payments can be provided for any identified need for care and support a local authority is to meet. This includes community care and support **and short and long term residential care**"<sup>39</sup> (emphasis added).

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<sup>38</sup> Ibid

<sup>39</sup> Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

However, it is worth noting that there has already been a long established policy that people are given a choice of accommodation options when going to live in a care home – see section 11 above. The *Social Services and Well-being (Wales) Act* continued this principle and authorities must ensure that where a person’s needs are going to be best met in a care home “that the person has a genuine choice” of which one. Therefore, given the choice that exists in this area already, it is not really clear what role the inclusion of direct payments as an option has.

## 13 The means test calculation – your ‘assessed contribution’ towards your care

Once the local authority has all the information about your income and savings, it can calculate how much you should contribute towards the costs of your care, making sure that you are left with:

- the weekly Minimum Income Amount (MIA) – **£33.00 per week**<sup>40</sup>;
- plus, in certain circumstances, the Savings Disregard in addition to the MIA (see section 10 and 7.2 respectively for further information on the MIA and Savings Disregard).

The local authority should provide you with written information setting out how it has calculated the amount you should pay. The following are given as basic examples only, to illustrate the process for working out a person’s assessed contribution towards their care fees.

### Example 1

The local authority arranges for you to move permanently into a care home run by a charity. The home costs £650 per week, which is within the local authority’s usual cost limit for someone with your assessed care and support needs. You are 83, single, and live in a rented flat. You have capital of £7,000 and your weekly income is a State Pension of £137.60 and Pension Credit Guarantee Credit (PCGC) of £39.50. This tops up your total income to give an assessable amount for the means test of £177.10 per week.

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<sup>40</sup> This is the figure in use since 12 April 2021 (it may change again in April 2022).

- **What is ignored:** Your capital is ignored by the local authority because it is less than £50,000 (it is also ignored for the calculation of your Pension Credit as it is less than £10,000).
- **What is included:** Your weekly income from your State Pension and PCGC, minus the Minimum Income Amount (MIA).

<b>The local authority's financial assessment calculation</b>	<b>£ (weekly)</b>
Total weekly income (£137.60 plus £39.50)	177.10
Less MIA	33.00
<b>Your weekly contribution</b>	<b>144.10</b>
Cost of the home	650.00
Less your contribution	144.10
<b>Therefore: authority's contribution</b>	<b>505.90</b>

### Example 2

The local authority arranges a permanent place for you in a care home that costs £680 per week; the authority's usual cost rate. You are married, aged 82, with a weekly private pension of £260, which you share 50/50 with your wife. Your wife will remain living in the house you jointly own. Your State Pension is £146.00 per week. You have a joint savings account with your wife of £36,000.

- **What is ignored:** The value of your house, as your wife continues to live there. Half your private pension will be ignored, as you are paying this half to your wife. The authority will count you as having half of the total balance of the joint savings account. It will therefore be disregarded in the means test (i.e.  $£36,000 \div 2 = £18,000$ . Your £18,000 is below the capital limit of £50,000).

- **What is included:** your State Pension and the other half of your private pension (£130) are included (Total = £146 + £130 = £276). Because of the level of your weekly income you will not qualify for Pension Credit. However, you are still entitled to have the flat rate Savings Disregard of £5.75 per week, in addition to the MIA.

<b>The local authority's financial assessment calculation</b>	<b>£ (weekly)</b>
State Pension	146.00
50% private pension	130.00
<b>Your total weekly income</b>	<b>276.00</b>
Less MIA and Savings Disregard	38.75 (33.00 + 5.75)
<b>Your weekly contribution</b>	<b>237.25</b>
Cost of the home	680.00
Less your contribution	237.25
<b>Therefore: authority's contribution</b>	<b>442.75</b>

**Note:** For further information on some of the issues contained in the above example, you may also wish to read Age Cymru's Factsheet 39w *Paying for care in a care home in Wales if you have a partner*.

### Example 3

You have identified a care home you wish to move into, but it is more expensive than the local authority's 'usual cost'.

However, your daughter has agreed to pay a third party contribution.

The care home costs £700 per week, but the authority's usual cost is £650. The authority also informs you that their stated usual cost is for the total cost of the care home placement, so will include your contribution as well.

You are single, aged 85, with a weekly private pension of £150.75 and a State Pension of £150.00. You live in a rented flat and do not own any property, but do have savings of £22,000.

- **What is ignored:** Your capital (i.e. the savings of £22,000) is ignored by the local authority because it is below the capital limit of £50,000.
- **What is included:** Your weekly income from your State Pension and private pension, minus the MIA and Savings Disregard of £5.75 per week (because of the level of your weekly income you will not qualify for Pension Credit, but you are still entitled to have the flat rate Savings Disregard).

<b>The local authority's financial assessment calculation</b>	<b>£ (weekly)</b>
State Pension and private pension	150.00 & 150.75
<b>Your total weekly income</b>	<b>300.75</b>
Less MIA and Savings Disregard	38.75 (33.00 + 5.75)
<b>Your weekly contribution</b>	<b>262.00</b>
<b>Cost of the home</b>	<b>700.00</b>
<b>Less your contribution</b>	<b>262.00</b>
<b>Less authority's contribution (bearing in mind that their usual cost is <u>£650</u>)</b>	<b>388.00</b> (i.e. this figure, plus your <u>£262.00 = £650</u> )  Total cost of home is <b>£700.00</b> , so there would be a <b>shortfall of £50</b> per week. Therefore:
<b>Third party contribution (from your daughter) is required</b>	<b>50.00</b>

## 14 Paying for ‘extras’ in care homes

You should make sure you find out exactly what care the local authority is arranging for you when it makes a contract with a home, and in the case of care homes with nursing, confirm whether or not the NHS funded nursing contribution has been included in the basic contract price – you shouldn’t have to pay for this. See section 16.2 below for information on the weekly NHS funded nursing contribution.

**The basic contract price should cover all essential care but may not, for instance, cover such things as clothing or hairdressing. The local authority may expect you to use your Minimum Income Amount (MIA) of £33.00 per week to cover costs such as these.**

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**Note:** Welsh Government guidance has stated that there is a difference between paying for more expensive accommodation and paying for ‘extras’ that do not form part of the essential care package that has been tailored to meet someone’s assessed needs. The MIA should not be spent on aspects of board, lodgings and care that have been contracted for by the local authority and are a main part of the care package and “local authorities **must not** put pressure on a person to spend their MIA in a particular way”<sup>41</sup>.

This does not, however, preclude residents buying extra services from the care home, where these are *genuinely* additional to services that have been contracted for by the local authority and/or assessed as necessary by the authority or NHS.

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## 15 NHS and other social care services in care homes

### NHS services

The NHS is responsible for providing **community health services** to people in care homes on the *same* basis as to people in their own homes. These services include, for example:

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<sup>41</sup> Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (*version 5 – April 2020*)



- district nursing;
- other specialist nursing services and advice, such as on continence issues, or stoma care (including the provision, where necessary, of supplies of continence products);
- physiotherapy, speech and language therapy; and
- in some cases, chiropody.

**Where such services are provided by the NHS, they are free of charge.**

If you are assessed as needing it, the NHS may have to cover the cost for particular equipment for you that is not provided as standard within the care home – see section 16.6 below for further information on this. Each Local Health Board (LHB) should have its own criteria for the type of help it will provide, based on guidance issued by the Welsh Government. These criteria should be published and you can contact your LHB for a copy.

### Local authority services

Local authorities should also provide personal social care services to people in care homes based on their eligible needs, as they would for a person living in their own home. This could include short-term rehabilitation or the provision of bespoke disability equipment, such as specialist seating – beyond which the care home has a legal duty to provide. This is based on each resident's right to a social care needs assessment.

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**Note:** If you have difficulty obtaining information or feel that you have been incorrectly charged for products and services, you can consider making a complaint. Both local authorities and LHBs (as part of NHS Wales) are required to operate formal complaints procedures. See Age Cymru's Factsheet 66w *Resolving problems and making a complaint about NHS care in Wales* for further information on complaints to the NHS and Factsheet 59w *How to resolve problems and make a complaint about social care in Wales* in regard to complaining to a local authority in regard to their social care provision.

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## 16 Non means-tested help with care home costs

This section outlines exceptions to the usual means tested requirement for care homes costs (as covered in the preceding sections of this factsheet).

### 16.1 Fully funded NHS continuing healthcare

**In certain circumstances, the NHS is responsible for meeting the full cost of someone's care in a care home. This is called NHS continuing healthcare (CHC) or 'fully funded care'.**

To be eligible a resident must have complex, intense or unpredictable health needs in a number of areas (known as 'domains' in the assessment process for CHC) which may – in combination or alone – demonstrate a '**primary health need**' because of the quality and/or quantity of care required to meet the individual's needs. As such, because it is judged that the primary reason for someone needing care is *health-based* (rather than *social care needs based*)<sup>42</sup>, they are entitled to:

- healthcare, which is **free**; rather than
- social care, which is **means tested**.

The assessment procedure for NHS CHC is contained in the Welsh Government's guidance document, '*Continuing NHS Healthcare: The National Framework for Implementation in Wales, June 2014*', available at:

[www.gov.wales/national-framework-nhs-continuing-healthcare](http://www.gov.wales/national-framework-nhs-continuing-healthcare)

This guidance should be used by all professionals – medical staff, social workers etc – involved in making eligibility decisions for CHC.

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<sup>42</sup> An issue which can often cause debate is the difference between what constitutes a healthcare need and what constitutes a social care need. The Welsh Government previously published 'Practice Guidance' which defined the difference between a healthcare and a social care need as follows: "Whilst there is not a legal definition of a healthcare need (in the context of continuing NHS healthcare), in general terms it can be said that such a need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional)". Whilst, "in general terms (not a legal definition) it can be said that a social care need is one that is focused on providing assistance with activities of daily living, maintaining independence, social interaction...and (in some circumstances) [finding and] accessing a care home or other supported accommodation. Social care needs are directly related to the type of welfare services that [local authorities] have a duty or power to provide. These include, but are not limited to...practical assistance in the home; assistance with equipment and home adaptations; visiting and sitting services; provision of meals; facilities for occupational, social, cultural and recreational activities outside the home...and assistance in finding accommodation (e.g. a care home)".

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**Note:** Between May and August 2019, the Welsh Government ran a consultation on a proposal for a revised version of the National Framework. For the main part, this has not yet been implemented, so does not replace the Framework noted above – however, one particular section of the revised version has begun to be used already (this is because it relates to ‘pandemic and emergency situations’<sup>43</sup>).

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If the nature of your needs indicate that you might be eligible for NHS CHC, those involved in your care must actively consider this possibility, inform you or your representatives of your rights, and initiate the relevant CHC assessment procedures.

**To move to the social care means test without addressing the potential right to free NHS service provision may constitute poor professional practice and can be challenged.**

More information on NHS CHC can be found in Age Cymru’s Factsheet 20w *NHS continuing healthcare and NHS-funded nursing care in Wales*.

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**Note:** If after looking at the above factsheet and/or the Welsh Government’s ‘National Framework’, you feel that your need for NHS CHC has not been addressed at all, or adequately, you can bring the issue up with health or social care staff working with you and ask for an assessment to be carried out (or ask for an initial decision to be reviewed). Age Cymru’s Factsheet 20w has information on how to go about this.

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<sup>43</sup> In the Welsh Government’s ‘COVID-19 – hospital discharge service requirements (Wales): frequently asked questions’ (available at: <https://gov.wales/hospital-discharge-service-requirements-covid-19>) this issue is covered as follows:

“The new national framework for CHC was expected in April 2020. When is this likely to be implemented? – Section 4 of the proposed new Framework, which sets out the assessments for eligibility for CHC during Pandemic and Other Emergency Situations, has been implemented with immediate effect in response to the current COVID-19 situation. The timetable for publication of the proposed Framework is being revised. We would hope to implement the new framework as soon as possible after the crisis, but have to consider that there will also be a backlog of CHC assessments for health boards to work through. We will work with stakeholders to agree an achievable timescale for implementation of the Framework”.

The draft of the new National Framework can be accessed at:  
<https://gov.wales/draft-national-framework-continuing-nhs-healthcare>

## 16.2 Care provided by registered nurses in nursing homes

**The NHS is responsible for meeting the registered nursing costs of all residents in care homes that provide nursing care (nursing homes).**

**This is known as the NHS funded nursing care contribution and you should receive it if you are not eligible for fully funded NHS continuing healthcare, but have still been assessed as requiring certain services from a registered nurse in providing, planning or supervising elements of your care.**

The NHS-funded nursing care contribution is only for the registered nursing part of someone's care and, as such, does not include time spent by any other staff who are involved in your personal care. Therefore, the NHS funded nursing care contribution will only meet *part* of the overall care home fees (all other aspects of the care package will be entirely paid for by the person themselves, or with help from the local authority – depending upon the care user's financial means).

Responsibility for meeting the cost of your nursing care lies with your Local Health Board (LHB). If you move to a home in a different LHB area, you will become the responsibility of that LHB when you register with a GP there.

You may need to ask for clarification regarding the NHS funded nursing care contribution if it isn't clearly separated from the main fee in the information provided to you about the fee and how it has been worked out.

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**Note:** Residential homes do not employ registered nurses because their residents receive nursing and other health related care from NHS staff based in the community. Consequently, these homes do not receive an NHS-funded nursing care contribution from their LHB.

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**The NHS does not make these payments to you.** Instead, it makes them either:

- directly to the nursing home; or
- to the local authority, if the contract for providing your care and accommodation is between the local authority and the nursing home.

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**Important:** If you may be eligible for free fully funded NHS continuing healthcare (CHC), this possibility needs to be considered first. Eligibility for the weekly NHS-funded nursing care should only be considered instead, once it has been agreed that you are not eligible for NHS CHC.

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### The 2021-22 NHS funded nursing care contribution rate (applicable in all areas of Wales)

The NHS funded nursing care contribution for 2021-22 has not been made available at the time of writing (April 2021). This factsheet will be updated when it becomes available.

For reference, last year's figure (2020-21) was **£186.40 per week**<sup>44</sup> towards the nursing home fees.

## 16.3 Rehabilitation – intermediate care and reablement

If your place in a care home has been arranged as part of a package of rehabilitation – often called **intermediate care** – where you are having short-term therapy or treatment, either following some time in hospital or to avoid having to go into hospital, it should be provided **free of charge for up to six weeks**.

Additionally, social care rehabilitation services – known as **'reablement'** – are also provided free of charge for the first six weeks – either in your own home, or a temporary stay in a specialist residential unit or residential care home.

Rehabilitation does not normally last longer than six weeks, but may occasionally be extended. At the end of this period you may qualify for fully funded NHS continuing healthcare (see above), or require other social care services, for which you may be charged. For more information see Age Cymru's Factsheet 76w *Reablement, intermediate care and preventative services in Wales*.

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<sup>44</sup> The £186.40 was made up of two components – £12.02 for continence products that may be necessary and £174.38 for the registered nurse services.

## 16.4 Mental health ‘after-care’ services

If you have previously been in hospital for treatment under certain sections of the *Mental Health Act 1983* (‘sectioned’), you may qualify for care and support services to be provided as an ‘after-care’ service under *Section 117* of the Act.

Section 117 places a joint duty on local authority social services departments and NHS Local health boards to provide these after-care services. **The services must be free of charge.**

Welsh Government guidance advises that “the range of services which can be provided [as after-care under Section 177] is broad”; *however* the services **must** have the purpose of:

- “meeting a need arising from or related to the person’s mental disorder”; and
- “reducing the risk of a deterioration of the person’s mental condition”; and therefore;
- **“reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder”**<sup>45</sup> (emphasis added).

### Organising after-care services

Welsh Government guidance advises that “although the duty to provide after-care begins when the patient leaves hospital, the planning of after-care should start whilst the patient is in hospital”.

“Local health boards and local authorities should take reasonable steps, in consultation with the patient, their family or carer...to identify appropriate after-care services for the patient in good time for their eventual discharge from hospital”<sup>46</sup>.

One option is for the services to be delivered in care home accommodation, though they can also be provided in your own home, or via a day centre or other facilities.

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<sup>45</sup> Social Services and Well-being (Wales) Act 2014: Part 11 (Miscellaneous and General), Welsh Government

<sup>46</sup> Mental Health Act 1983: Code of Practice for Wales (Revised 2016), Welsh Government

## When the section 117 after-care duty comes to an end

If social services or the NHS believe that you no longer need after-care, section 117 services may be withdrawn. However, the organisations must reassess your needs before they can come to that conclusion.

Circumstances will differ in each individual case as to when it will be appropriate for the section 117 after-care duty to end. Services “should not be withdrawn solely on the basis of [the fact that] the patient has been discharged from the care of specialist mental health services”; or because “an arbitrary period has passed since the care was first provided”<sup>47</sup>.

Mind advises that, “if your aftercare services have been taken away and your mental condition has begun to deteriorate, then the services should be put back to stop your condition from getting worse”<sup>48</sup>.

The Welsh Government’s *Mental Health Act 1983: Code of Practice for Wales (Revised 2016)* contains further information on the use of section 117 after-care. A copy can be accessed at:

[www.gov.wales/mental-health-act-1983-code-practice](http://www.gov.wales/mental-health-act-1983-code-practice)

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**Note:** Where section 117 after-care services have come to an end, depending on circumstances, the person may well be eligible for other social services and/or health service provision. The services they are eligible for at this stage will be decided via a full re-assessment of their needs – see section 4.1 of this factsheet above and Age Cymru’s Factsheet 41w *Social care assessments for older people with care needs in Wales* for further information.

These other services may attract a charge, as per the information in this factsheet (if it is care home accommodation), or in accordance with the information in Age Cymru’s Factsheet 46w *Paying for care and support at home in Wales* (for non-residential care).

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<sup>47</sup> Ibid

<sup>48</sup> ‘Leaving hospital – Section 117 aftercare’, Mind website: [www.mind.org.uk/information-support/legal-rights/leaving-hospital/section-117-aftercare/#HowLongWillIGetSection117Aftercare](http://www.mind.org.uk/information-support/legal-rights/leaving-hospital/section-117-aftercare/#HowLongWillIGetSection117Aftercare) (last accessed 16 April 2021)

## 16.5 Continence services

The NHS is responsible for providing continence services to residents in homes providing nursing care and for meeting the cost of any continence supplies (such as continence pads) that those residents are assessed as requiring, including any equipment needed. Community health services such as continence supplies and district nursing should be provided to residents of care homes that do not provide nursing care using the same criteria as for people living in their own homes.

## 16.6 Specialist assessment and bespoke equipment

Care homes have to provide an appropriate range of equipment to meet the assessed needs of their residents and ensure their safety.

They also need to meet standards stipulated by the *Care Inspectorate Wales (CIW)*<sup>49</sup>, including in relation to manual handling, lifting and mobility equipment.

**The basic equipment types will be different in care homes with and without nursing** – for example, a care home with nursing would generally be required to provide a pressure relieving mattress because it is likely to have residents in need of this type of equipment. Care homes should not accept people whose needs they are unable to meet.

**If you require equipment that is not supplied by the care home because it is designed to meet needs that are specific to you and it is bespoke, the NHS or the local authority may have a duty to provide it on the same basis as they would if you were in your own home.**

Provision of specialist equipment may require an assessment from an occupational therapist from the local authority or district nurse.

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<sup>49</sup> Statutory Guidance: For service providers and responsible individuals on meeting service standard regulations for – Care home services; Domiciliary support services; Secure accommodation services; and Residential family centre services (Version 2), Welsh Government, April 2019



## 17 Deciding to appoint someone to deal with your financial affairs and/or welfare decisions

You may wish to consider how you would want your affairs dealt with, were you to lose the mental capacity to do this in the future.

A **Lasting Power of Attorney (LPA)** is a way to appoint someone to deal with those decisions on your behalf. There are two types of LPA:

- a property and affairs LPA that gives the person/people you appoint as your attorney the authority to make decisions about your financial affairs;
- a personal welfare LPA that gives the attorney authority to make decisions about your healthcare and personal welfare.

Age UK's Factsheet 22 *Arranging for someone else to make decisions on your behalf* has detailed information on this topic.

## 18 Acting on behalf of an older person who lives in a care home

### 18.1 As an attorney appointed via a Lasting Power of Attorney

As discussed in section 17 above, a person can make a Lasting Power of Attorney (LPA) in order to appoint a trusted person to make decisions on their behalf.

**However, an LPA can only be set up in instances where the person has sufficient mental capacity to do so.**

Otherwise, a person wishing to act on their behalf may well have to apply to the *Court of Protection* – see section 18.2 below (a possible exception to this might be where someone's income is purely made up of benefit income (social security benefits or State Pension) and it may be sufficient to become an 'appointee' to deal with this – see section 18.3).

### 18.2 As a deputy appointed by the Court of Protection

If someone can no longer manage their own affairs due to reduced mental capacity and did not grant a Lasting Power of Attorney prior to this, then an application to the Court of Protection (COP) will probably be necessary in order to deal with their affairs on their behalf.

The COP has the power to appoint a ‘deputy’ (usually a family member or friend) who will make decisions in the person’s best interests. Age UK’s Factsheet 22 *Arranging for someone else to make decisions on your behalf* includes detailed information on applying to the COP and the role of deputy.

### 18.3 Appointeeships for benefits

If a person receiving social security benefits is unable to manage his or her affairs, the Secretary of State for Work and Pensions (through the local social security office) can appoint someone else to make claims and receive benefits on their behalf. An appointee would normally be a close friend or relative who visits the older person regularly. As a ‘last resort’, a care home owner can act as appointee, but in such cases he or she must keep a record of the money collected on the person’s behalf. An appointeeship’s powers **only** cover managing social security benefits.

### 18.4 Advocacy

Someone you know may need to enter a care home and have mental capacity, but have difficulty to a certain extent in expressing their views, or lack confidence to do so. Sometimes friends or family can speak on behalf of the resident. If this option is not available, or not suitable, there may be a local advocacy scheme that could arrange for someone with experience of this sort of issue to support the resident to make their views known.

Also see section 3 above for information on advocacy provision under the *Social Services and Well-being (Wales) Act*.

## 19 Mental capacity issues and care home residents – protection of rights

If there are issues to do with mental capacity regarding the arrangement of a care home placement by a local authority, it is necessary for all those supporting or working with an individual to adhere to the ‘**best interest**’ standards set out in:

- the **Mental Capacity Act 2005**; and
- within the **Deprivation of Liberty Safeguards**.

## Mental Capacity Act 2005

This Act aims to protect people who may not be able to make certain decisions for themselves and to empower them to make their own decisions when possible. Important principles about mental capacity have been established by the Act:

- **A presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
- **The right to be supported to make their own decisions** – all practicable steps must be taken to help a person make their own decision before anyone concludes that they are unable to do so.
- **The right to make eccentric or unwise decisions** – a person is not to be treated as being unable to make a decision simply because the decision they make is seen as unwise.
- **Best interests** – any decision made or action taken on behalf of people without capacity must be made in their best interests.
- **Least restrictive intervention** – anyone making a decision for or on behalf of a person without capacity should consider all effective alternatives and choose the one that is the least restrictive of the person's basic rights and freedoms.

See Age UK's Factsheet 22 *Arranging for someone else to make decisions on your behalf* for further information.

## Deprivation of Liberty Safeguards (DoLS)

The DoLS came into force in April 2009 under amendments to the *Mental Capacity Act 2005*. They relate to those who lack mental capacity and are deprived of their liberty in any way in a hospital, a care home or supported living arrangement. It is the responsibility of the care home or hospital (known as the 'managing authority') to ensure that any deprivation of liberty is lawful.

If someone is identified as being deprived of their liberty, or at risk of being deprived of their liberty, the managing authority (the hospital or care home managers) must consider:

- whether it is in the person’s best interests and necessary to protect them from harm;
- whether there are alternative, less restrictive, care regimes that would not amount to a deprivation of liberty.

Under the DoLS, an **Independent Mental Capacity Advocate (IMCA)** **must be appointed by a local authority** where someone lacks capacity to make a decision about moving into a care home and has no friends or relatives to support them.

For further information see Age UK’s Factsheet 62 *Deprivation of Liberty Safeguards* and Factsheet 22 *Arranging for someone else to make decisions on your behalf*.

## 20 **Self-funders – arranging and paying for your care yourself**

### 20.1 **People who have to fully ‘self fund’ care – is any sort of assistance still available?**

As mentioned at the beginning of this factsheet, it is important to be aware that – regardless of your financial circumstances – you still have a **right to an assessment** of your care needs by the local authority.

**Additionally, since April 2016, self-funders have been able to ask the local authority to *arrange their care*** (previously, the local authority *only* had a responsibility to arrange a care home placement for someone who was in a position to fully self fund – i.e. assets over the capital limit – if they lacked the capacity to do so themselves).

This right is confirmed in the Welsh Government’s guidance as follows:

The *Social Services and Well-being (Wales) Act* “enables a person who can afford to pay, in full, for their own care and support [in a care home] to ask the local authority to arrange this on their behalf”<sup>50</sup>.

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<sup>50</sup> Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment), January 2016, Welsh Government (*version 5 – April 2020*)

It goes on to state that: “**The rate at which the local authority commissions the placement is a matter for local authority determination**”<sup>51</sup>.

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**Note:** As was previously the case under old legislation, the authority will have a *duty* to arrange care home accommodation for someone in a position to self fund, if they lack the mental capacity to arrange the placement.

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## 20.2 Choosing to make the arrangement yourself

If you have resources over the capital limit and will be fully self funding, you can, of course, opt to arrange all your care entirely independently of the local authority. Age Cymru’s Factsheet 29w *Finding care home accommodation in Wales* may be helpful in this regard, as it has a section on issues to consider and questions to ask when choosing a home.

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**Note:** If you will be fully self funding, and making your care home arrangements yourself, remember that you could – depending on your exact level of needs – qualify for the *weekly NHS funded nursing care contribution* (see section 16.2 above). Or, you might at some stage qualify for *fully funded NHS continuing healthcare* (see section 16.1).

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You may be able to claim and receive Attendance Allowance (AA), Disability Living Allowance (DLA) care component or Personal Independence Payment (PIP) daily living component if you are not receiving funding assistance from the local authority. NHS payments for registered nursing care do not affect your right to receive AA, DLA (care component) or PIP (daily living component).

Depending on your capital and income you may also be able to claim Pension Credit – see section 9.1 for further information, or contact your local Age Cymru to discuss benefits you may be entitled to.

If you have savings and/or assets of more than £50,000 you will be expected to pay the fees for your accommodation and personal care in full until your savings drop to this level.

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<sup>51</sup> Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

### 20.3 **If you are self-funding, but your capital is reducing towards the capital limit**

**If your capital is falling towards £50,000, approach the local authority and ask for an assessment of your care needs. This may take some time to arrange, so it may be worth approaching the authority a few months *before* your capital reduces to £50,000.**

Local authorities have been told that in this situation they must undertake an assessment as soon as is reasonably practicable and, if necessary, take over the arrangements to ensure that the resident is not forced to use up capital below the capital limit.

#### **Which local authority will be responsible?**

**If you moved into a care home in a different local authority area from where you lived before and have since been self-funding, the local authority in the area you now live will usually be responsible for assisting you.**

It is generally difficult to obtain firm assurances from a local authority as to what assistance it might provide in the future.

### 20.4 **If you have been self-funding, but the care home will be more expensive than the local authority's usual cost limit**

**If the home in which you have been self-funding costs more than the local authority is usually prepared to pay for the type of care you need, this may cause difficulties if you have to apply for local authority assistance later on.**

The local authority may require a third party to make up the difference and, if none is available, suggest that you move to a cheaper home.

If either of the above is suggested, ask the local authority to carry out an assessment of ***all your needs***, including your **physical or psychological well-being and your social and cultural needs**. They should also examine the risk of moving you.

If your existing care home is found to be the only one that can meet your assessed needs, then the full cost should be met by the local authority and a top up cannot be requested. See section 11 above for further discussion on top ups.

Also, see Age Cymru's Factsheet 60w *Care homes in Wales: choice of accommodation when the local authority is assisting with funding* for further information.

## 21 Care home contracts

The following Care Inspectorate Wales (CIW) document must be adhered to by all care home providers:

*Statutory Guidance: For service providers and responsible individuals on meeting service standard regulations for – Care home services; Domiciliary support services; Secure accommodation services; and Residential family centre services (Version 2), Welsh Government, April 2019*

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**Note:** As the regulatory body, the CIW will base its assessment of the care provider's fitness to provide services using these standards. A copy can be found on the CIW website at:

[www.gov.wales/guidance-providers-care-home-and-domiciliary-support-services](http://www.gov.wales/guidance-providers-care-home-and-domiciliary-support-services)

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On care home contracts, the guidance advises that:

“The service provider must ensure that every individual is given a signed copy of [a service] agreement relating to...the care and support provided to the individual.”

“Where individuals are paying for their own care” – **“in full or partially”** – they or their representatives are [to be] provided with a written contract”.

This will include:

- “terms and conditions”;
- “fees, including top ups or any late payment fees”;
- “arrangements and timescales for notifying individuals of contractual changes”;
- “arrangements for how payments are to be made”; and

- “the rooms to be used in accommodation-based services”<sup>52</sup>.

Age Cymru’s Factsheet 29w *Finding care home accommodation in Wales* also contains further information on care home contracts and related issues, such as the consumer rights for care home residents.

## 22 Complaints about care

If you are not satisfied with any aspect of the service that you receive from a local authority or a care home, you can make a complaint. For example, this could relate to:

- the processing of the means test;
- standards of care;
- the need for clear and transparent information;
- standards of communication; or
- possible delays.

For further information on the complaints procedure; how to submit a complaint and what to expect when you do, see Age Cymru’s Factsheet 59w *How to resolve problems and make a complaint about social care in Wales*.

## 23 Safeguarding older people from abuse and neglect

Issues involving elder abuse and/or neglect can sometimes occur in relation to people living permanently in a care home. Local authority social services departments are the main statutory organisation that should respond to cases of elder abuse and coordinate adult protection investigations.

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<sup>52</sup> Statutory Guidance: For service providers and responsible individuals on meeting service standard regulations for – Care home services; Domiciliary support services; Secure accommodation services; and Residential family centre services (Version 2), Welsh Government, April 2019



In doing so, local authorities will work in partnership with a range of other organisations, as appropriate – for example, the police; the NHS (hospitals, the Ambulance Service); care home providers/managers and relevant regulatory bodies (e.g. the Care Inspectorate Wales).

For further information on this topic, see Age Cymru's Factsheet 78w *Safeguarding older people in Wales from abuse*.

## 24 Equality and human rights

The age element of the *Equality Act 2010* became legally enforceable in health and social care on 1 October 2012.

Under the Act, it is unlawful to discriminate against someone in the provision of goods and services unless a practice is covered by an exception from the ban, or good reason can be shown for the differential treatment, known as '**objective justification**'.

There are **no** specific exceptions to the ban on age discrimination for health or social care services. This means that any age-based or related discriminatory practices by the NHS and social care organisations must now be able to be objectively justified to ensure their legality.

Other equality areas such as disability are also included within the Act. The *Equality Advisory and Support Service*, can be contacted for further information on these issues – see section 25 for contact details.

## 25 Useful organisations

### Age Cymru Advice

Free and confidential information and advice on matters affecting the over 50s in Wales.

**Tel: 0300 303 44 98**

**E-mail: [advice@agecymru.org.uk](mailto:advice@agecymru.org.uk)**

**Website: [www.agecymru.org.uk/advice](http://www.agecymru.org.uk/advice)**

## Age Cymru organisations (local)

Your local Age Cymru may be able to provide advice and support on a range of issues. **Age Cymru Advice** can provide details of your local Age Cymru (see above), or visit the Age Cymru website at:

[www.agecymru.org.uk/local](http://www.agecymru.org.uk/local)

## Care Inspectorate Wales (CIW)

CIW inspects and regulates care and social services in Wales.

Tel: 0300 7900 126

E-mail: [ciw@gov.wales](mailto:ciw@gov.wales)

Website: [www.careinspectorate.wales](http://www.careinspectorate.wales)

## Carers UK

A national charity providing information and advice for carers.

Helpline: 0808 808 7777

Website: [www.carerswales.org](http://www.carerswales.org)

## Citizens Advice Bureaus (CABs)

National network of free advice centres offering confidential and independent advice, face to face or by telephone.

Tel: 0800 702 20 20

Details of your nearest CAB can be found at:

[www.citizensadvice.org.uk/wales](http://www.citizensadvice.org.uk/wales)

## Dewis Cymru

This is a website owned and funded by local authorities across Wales. The site was set up by the Welsh Government to assist in the delivery of certain provisions in the Social Services and Well-being (Wales) Act. The Dewis Cymru site contains an extensive database of a wide variety of services that can help people with their well-being.

[www.dewis.wales](http://www.dewis.wales)

## **Elderly Accommodation Counsel (EAC)**

Provides information on all forms of accommodation, support and care for older people.

EAC FirstStop Advice: 0800 377 7070

E-mail: [info@firststopadvice.org.uk](mailto:info@firststopadvice.org.uk)

Website: [www.eac.org.uk](http://www.eac.org.uk)

## **Equality Advisory & Support Service**

A helpline that can advise people on equality and human rights issues.

Tel: 0808 800 0082

Website: [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

## **Local Health Boards (LHBs)**

There are seven LHBs in Wales. Each LHB is responsible for delivering all NHS healthcare services in the geographical area they cover. Links to each LHB web page can be found on the Welsh Government's website at:

<https://gov.wales/nhs-wales-health-boards-and-trusts>

## **Older People's Commissioner for Wales**

Independent champion for older people across Wales.

Tel: 03442 640670

E-mail: [ask@olderpeoplewales.com](mailto:ask@olderpeoplewales.com)

Website: [www.olderpeoplewales.com](http://www.olderpeoplewales.com)

## **Public Services Ombudsman for Wales**

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as a local authority social services department.

Tel: 0300 790 0203

E-mail: [ask@ombudsman.wales](mailto:ask@ombudsman.wales)

Website: [www.ombudsman.wales](http://www.ombudsman.wales)

## Welsh Government

The devolved government for Wales.

Tel: 0300 060 4400

E-mail: [customerhelp@gov.wales](mailto:customerhelp@gov.wales)

Website: [www.gov.wales](http://www.gov.wales)

## 26 Further information about Age Cymru

Age Cymru is the national charity for older people in Wales.

We campaign, we research and we fundraise to make sure we build a better life for all older people. We ensure older people's voices are heard, we challenge and change attitudes and we fight discrimination wherever we find it.

We provide a range of national and local services and programmes directly to older people in the community and we ensure the highest standards so you can be assured of consistency and quality wherever you see the Age Cymru name and logo.

Our family includes local Age Cymru partners and national partners, Age NI, Age Scotland and Age UK.

### Our information materials

Age Cymru and Age UK publish a large number of free Information Guides and Factsheets on a range of subjects, including money and benefits, health, social care and housing. Some resources, such as this factsheet, are produced 'in-house' by Age Cymru, whilst others are branded Age UK and – depending on the subject matter – contain either information which is applicable in England and Wales, or for the whole of the UK.

## Contact details

### Age Cymru Advice

**Tel: 0300 303 44 98** (9am to 4pm, Monday – Friday)<sup>53</sup>

**E-mail: [advice@agecymru.org.uk](mailto:advice@agecymru.org.uk)**

**Website: [www.agecymru.org.uk/advice](http://www.agecymru.org.uk/advice)**



**[www.facebook.com/agecymru](http://www.facebook.com/agecymru)**



**[www.twitter.com/agecymru](http://www.twitter.com/agecymru)**



**[www.youtube.com/agecymru](http://www.youtube.com/agecymru)**

Contact us if you would like:

- To order copies of any factsheets or information guides.
- Further advice if you cannot find the information you need in this factsheet.
- Details of your nearest local Age Cymru organisation.

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<sup>53</sup> 0300 numbers are reserved exclusively for charities and not-for-profits. Calls made to an 0300 number are charged the same as a call to a standard 01 or 02 number. They are also automatically included in any landline or mobile inclusive minutes package.

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